

E-FILED 9/20/05

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

GIUSEPPE "NINO" CAMPANELLA,
ET AL.,

Plaintiffs,

v.

JEFFREY LONGORIA, ET AL.,

Defendants.

NO. 5:05-cv-1945 RS

**ORDER GRANTING MOTION TO
DISMISS SECOND CLAIM FOR
RELIEF AGAINST THE COUNTY**

Plaintiffs, Giuseppe Nino Campanella, Lynette Campanella, and Guiseppe and Lynette Campanella as guardians ad litem for Domenica Campanella, Carmela Campanella, Sarina Campanella, and Guiseppe Campanella, Jr. (collectively "plaintiffs"), bring suit against several deputy sheriffs ("Sheriffs"), as well as the County of Santa Clara ("County"), seeking recovery for violations of their civil rights and other state laws alleged to have occurred during a search of their residence. Plaintiffs' second claim for relief against the County alleges that there is a pattern of ongoing unconstitutional practices and violations by the deputy sheriffs consisting of false arrests, illegal searches, and excessive use of force. The County moves to dismiss the second claim for relief filed against it based on the California Supreme Court's decision in Venegas v. County of Los Angeles, 32 Cal. 4th 820, 839 (2004), in which the court held that sheriffs are

1 state rather than County actors when investigating crimes. The motion to dismiss was submitted on the
2 papers by the Court, pursuant to Civil L.R. 7-1(b).

3 Based on all papers filed to date, including the briefs filed by the parties in a companion case, C-
4 04-4906 RS, "Campanella I," in which the Court addressed this identical issue, the motion to dismiss the
5 second claim for relief against the County is granted. As noted in Campanella I, the Ninth Circuit has
6 explained that Circuit authority may be superceded bu a contrary decision of a court of last resort. Miller v.
7 Gammie, 335 F.3d 889, 900 (9th Cir. 2003). Here, while confronted with the opposite finding in earlier
8 Circuit decisions, the California Supreme Court, the court of last resort on the particular issue at hand, has
9 found in Venegas that County Sheriffs act as agents of the state while performing their law enforcement
10 roles and, therefore, are entitled to immunity from a § 1983 claim under the Eleventh Amendment.
11 Accordingly, the second claim for relief against the County based on 42 U.S.C. § 1983 is dismissed.

12 The case management conference, both in this action and in Campanella I, scheduled for
13 September 21, 2005 is continued to October 5, 2005. Counsel shall meet and confer and file a joint case
14 management statement on or before September 28, 2005.

15 IT IS SO ORDERED.

16 Dated: 9/20/05

/s/ Richard Seeborg
RICHARD SEEBORG
United States Magistrate Judge

THIS IS TO CERTIFY THAT NOTICE OF THIS ORDER HAS BEEN DELIVERED TO:

Anthony Boskovich policemisconduct@compuserve.com

Aryn Paige Harris aryn_harris@cco.co.scl.ca.us

Dated: 9/20/05

Chambers of Judge Richard Seeborg

By: /s/ BAK

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